

## APPENDIX F

April 14, 1999

### MEMORANDUM

**SUBJECT:** Find FY 2000/2001 Office of Enforcement and Compliance Assurance Memorandum of Agreement Guidance

**FROM:** Steven A. Herman /s/  
Assistant Administrator

**TO:** Regional Administrators  
State Environmental Commissioners

This memorandum provides you with the final FY 2000/2001 Office of Enforcement and Compliance Assurance (OECA) Memorandum of Agreement (MOA) Guidance, which sets forth program direction and priorities for the national enforcement and compliance program for the next two years. This guidance was developed in consultation with other national program managers, regions, states, tribes, and state/local associations. We are sending the guidance directly to state commissioners and state associations, and regional offices should forward the guidance to their state offices and other stakeholders within their region. The document reflects our establishment of risk-based priorities to address serious compliance problems and support accomplishment of our national environmental priorities. It provides a framework for leveraging the work of state and federal personnel to accomplish these mutual goals. I strongly encourage regions and states to use this document as the basis for joint work planning.

Thank you for your continued support in developing this guidance. I particularly appreciate the amount of time and effort which you and your staff have taken both to help us identify the priorities and in subsequent review and comment on the guidance. OECA is committed to continue improving the involvement of all parties in developing priorities. We took several steps this year that included additional state involvement in initial thinking and advance review of the guidance prior to distributing it for comment. We welcome suggestions for further involvement. This final document does reflect adjustments based on these comments. You will also note that formatting changes have been made which we hope will make the document easier to read and understand. A condensed response to comments document will be sent out under separate cover in the near future.

As you are aware, the draft guidance contained significant changes from last year to improve the guidance, by reducing the number of national priorities, linking strategic and annual planning, and better measuring results. The final attached guidance also reflects these changes. There are two

changes, in particular, that I want to bring to your attention in the final guidance. First, the proposed measures list has been removed from the guidance and will be provided by the end of May as a separate addendum. This addendum will contain a complete, consolidated set of measures aligned under the EPA Strategic Plan, which have been fully coordinated with existing RECAP and NPMS measures. Second, selection of specific program areas and development of management reports for the revamped regional evaluation program are still ongoing. A separate memorandum will be issued on the specific areas for review and initiation of a Headquarters-regional workgroup.

**Regional MOAs are due to Headquarters by September 1, 1999.** The submission date for Regional MOAs has been revised from August 2, 1999, the date identified in the draft MOA guidance, to September 1, 1999, to match the Agency's schedule. This should also accommodate extensions requested by some regions to allow them sufficient time to complete negotiations with states regarding state priorities, activities and commitments.

When submitting your MOA, please provide a hard copy to John Neylan, Chief, Planning Branch, Enforcement Planning, Targeting and Data Division, Office of Compliance, mail code 2222A. Please also submit an electronic version in addition to the hard copy [Neylan.John@epamail.epa.gov]. If you have any questions regarding the MOA guidance itself or in developing your regional MOA, please contact John Neylan at 202/564-5033.

#### Attachments

cc: Assistant Administrators  
Deputy Regional Administrators  
Chairman, Tribal Operations Committee  
OECA Office Directors  
Regional Enforcement Division Directors  
Regional Counsels  
Regional Enforcement Coordinators  
State Associations  
U.S. Department of Justice  
Regional MOA Coordinators

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\* = new

## **1. INTRODUCTION TO CORE PROGRAM**

The FY 1998/1999 OECA MOA guidance included a detailed, statute-specific core program description. This core program description has been updated in this MOA to reflect activities not previously included, such as the use of air investigations in lieu of some routine inspections, and new core program descriptions for environmental justice, multimedia program, and tribal activities. Also, a section has been added on EPA/state work planning and oversight. This section applies to all core programs and replaces the individual statute-specific state oversight sections which appeared in the FY 1998/1999 MOA guidance.

In some cases, core programs have been revised to reflect a specific area of emphasis. An example is the inclusion of Federal facilities in compliance monitoring and enforcement activities for some statutory programs. Federal facilities represent a significant component of the regulated community in some media programs. In addition, EPA's enforcement authorities against Federal facilities have been clarified in the last few years, making it clear that EPA has penalty authority under numerous statutes including, but not limited to, RCRA (including UST), SDWA, CAA, TSCA, (Title IV) and CERCLA.

### ***Core Program Activities***

OECA is committed to the concept that maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. All regional programs should:

- follow the applicable program enforcement response policies and timely and appropriate guidance (where these exist);
- evaluate and resolve, consistent with the national audit policy, all self disclosures received;
- track compliance with consent decrees and with administrative orders and take all necessary actions to ensure continued compliance;
- reduce the backlog of administrative cases (if any), and work with the Department of Justice and Headquarters to develop, file, prosecute, and settle outstanding judicial actions;
- include the small business policy under self-disclosures;
- identify compliance problems and where compliance assistance can be an effective tool in conjunction with a strategic approach to solving the problems; and
- provide data to national databases.

Recognizing the magnitude of maintaining the core program and the variation in workload across regions, regions may need to make adjustments within their core program. The negotiation process will provide the opportunity to address difficult trade-offs within the core.

***Sector Core Approach***

In addition to the enforcement and compliance program approaches described above, certain follow through activities should be emphasized as part of the core program.

1. The core sector writeup has been revised for FY 2000/2001 in order to capture work being done by the regions in support of national sector strategies. The seven sector strategies include petroleum refining, coal-fired power plants, CAFOs, industrial organics, chemical preparation, iron and steel, and primary nonferrous facilities. The regions should continue to support work for these sectors, unless they provide an explanation for why they cannot do so (such as trading off resources to support national priority activities).
2. Three of the sector strategies, CAFOs, coal-fired power plants, and petroleum refining, will specifically be addressed as elements of FY 2000/2001 national priorities.
3. Additional elements of CAFOs, coal-fired power plants or petroleum refining not directly included in the priority, and elements of the four remaining sectors (industrial organics, chemical preparation, iron and steel, and primary non-ferrous metals) which the regions previously agreed to, should be incorporated into the region's core program for MOA submission and negotiation purposes.
4. Since dry cleaning, a national priority since FY 1996, is no longer a national priority in FY 2000, regions are also requested to submit a dry cleaning maintenance plan as part of their MOA submission, unless they can indicate why such a plan is not needed. Regions may also use the dry cleaning maintenance plan as a template for developing maintenance plans for other sectors, (e.g., auto service, pulp mills), where work has been completed. Submission of these plans is not required as part of this MOA submission.

Aside from commitments to complete national sector strategy activities, and submission of a dry cleaning maintenance plan, regions need only report exceptions to the core program. Regions may make tradeoffs within the core, either within or across media programs. In its discussion of the core program, the region should identify, by media or program area, any changes or tradeoffs to the core program and provide an explanation. In completing this section of the MOA, the region should explicitly consider:

- whether its level of enforcement activity is likely to change significantly in any media;
- whether it will meet national guidance on timely and appropriate responses in all media;
- whether there are data input/timeliness problems with a particular data system; and
- whether there are changes to its compliance monitoring program, e.g. to reflect a shift to conduct more resource intense investigations rather than routine inspections.

Program specific descriptions follow later in the document.

***Sector Core Activities***

The sector approach is one of the tools regions and states should use to improve facility compliance. By developing specific sector strategies, EPA and the states can think broadly about the nature of the compliance problems facing selected industries and identify an appropriate mix of tools to address specific problems. The overall goal of each sector strategy is to improve the compliance rate and reduce the total emissions, discharges, and releases from the overall sector. Full implementation of a sector strategy includes:

- reviewing noncompliance data,
- developing compliance histories,
- evaluating actions taken against sector facilities,
- identifying affected geographic areas,
- working with state, tribal, and local partners to determine concerns,
- identifying the size of the universe,
- assessing the potential environmental harm, and
- analyzing the human health risks.

Each sector strategy should identify special problem areas, and provides specific corrective measures. Over the past several years a group of national sectors have been priorities for the national enforcement and compliance program. During FY 1998/1999, OECA initiated national sector strategies for seven specific industrial/business sectors. The regions' and Headquarters' teams are well into the implementation phase of actions commenced in FY 1998 and FY 1999 for these sectors. During the course of FY 1999, the Headquarter-regional sector teams will evaluate progress made in implementing the sector strategies, and determine next steps to be taken in FY 2000/2001.

National sector strategies can be implemented in two ways in FY 2000/2001: 1) continued full implementation of activities under the strategy, or 2) a maintenance plan approach. Initiating a maintenance plan should be considered after the goals of the sector strategy have been achieved or a high level of compliance is otherwise obtained. The primary goal of a maintenance plan is to avoid a recurrence of significant compliance problems.

#### ***Specific Sector Core Expectations***

- Three of the seven sectors (CAFOs, coal-fired power plants and petroleum refining) are addressed as elements of FY 2000/2001 national priorities.
- For the other four sectors (industrial organics, chemical preparations, iron and steel, and primary nonferrous metals), activities, agreed to by the regions and Headquarters and the national initiative sector workgroups for FY 2000/2001, should be incorporated into the Region's core program MOA submission for negotiation purposes.
- The regions should ensure that sufficient resources are committed to completing the activities identified under each of the national sector strategies, unless the region provides an explanation for why it cannot do so, such as a tradeoff for work being done in support of a national priority.
- If facilities exist in a region which are impacted by a national sector strategy, but the region is unable to participate in strategy implementation, the region should provide an explanation in its

- MOA submission for why it cannot participate.
- If a high degree of significant noncompliance exists in sectors where there is no national strategy, but for which the region or state has concerns, the region should devise a strategy for improving compliance rates, and submit its strategy as part of the MOA submission.

### *Dry Cleaning Maintenance Plan*

Headquarters is specifically requesting a maintenance plan for dry cleaning. This plan should be a 2-3 page document submitted as part of the MOA submission, unless the region can indicate why such a plan is not needed. The elements of a maintenance plan can be implemented either by the region or the state. The following optional elements should be considered by the Regions when developing a sample maintenance plan:

- Time-frame anticipated for plan to be in effect (duration of the plan is flexible)
- Describe the mechanism in place for responding to citizen complaints/requests at a regional, state, tribal, and/or local level.
- Continue to provide timely compliance assistance materials
- Continue to maintain partnerships developed with the industry (contact stakeholders, trade associations network, mentoring program, ensuring tools continue to be available.)
- Continue to implement a targeting strategy for compliance monitoring.
- Continue to collect data for the measures identified for applicable environmental indicators, outcome measures, or output measures.

## **2. EPA-STATE COORDINATION ON WORKPLANNING AND OVERSIGHT**

EPA is addressing state concerns about the importance of joint planning and priority setting, work sharing, and effective oversight by identifying this as a management focus to be addressed by each region in the FY 2000/2001 MOA process. In addition, work planning and oversight are critical components of our core program. All programs should include EPA-state work planning, consultation and assessment activities. In developing the Regional discussion under "management focus" in the guidance, the Region should consider this core program description.

### **1. Joint Planning, Priority Setting, and Worksharing for Enforcement and Compliance Assurance**

The goal of this activity is to promote greater joint work planning between EPA and the states to achieve more efficient identification of enforcement and compliance priorities, deployment of resources, higher levels of coordination, and greater compliance. On a regular basis, senior regional and state management will discuss enforcement and compliance assurance program directions, initiatives, and tradeoffs as well as specific enforcement and compliance concerns that can be evaluated by the regions and states. Existing OECA guidance and policy, such as Steve Herman's February 21, 1996 memorandum, "Core EPA Enforcement and Compliance Functions," the November 27, 1996 "Operating Principles for an Integrated Enforcement and Compliance Assurance Program," and the

1986 "Revised Policy Framework for State/EPA Enforcement Agreements" and its subsequent addenda, should continue to guide regional discussions.

Specifically, the regions and states will work jointly to develop priorities taking into consideration national program priorities, regional priorities, and state priorities for enforcement and compliance assurance as discussed in this guidance. The regions and the states will develop appropriate workshare arrangements to address identified priorities in federally authorized programs and to allow coordination of activities and sharing of results.

## 2. Consultation on Enforcement and Compliance Assurance Activities

Ongoing communication and consultation between EPA and states is critical for a smooth working relationship. This process will provide the regions and the states an opportunity to ensure that established notification procedures with respect to inspections and enforcement actions in federally authorized programs are followed. Specifically, it will enable discussion of initiatives, implementation efforts, and the status of projects/cases, including the "no surprises" policy. To effectively implement agreements, the regions and states should establish procedures to communicate the results to all organizational levels within each region and state, and to reflect results in EPA and state enforcement and compliance assurance agreements such as state enforcement agreements, memoranda of agreement, Performance Partnership Agreements, and grant agreements.

## 3. State-of-Environmental Compliance Analysis and Assessment

OECA envisions two ways in which EPA and the states will work together to analyze and assess the state of environmental compliance. First, EPA, in consultation with the states, will assess the general state of compliance and enforcement program implementation in all major program areas from reports drawn periodically from the data systems and from EPA and state sources of compliance information, and develop needed follow-up strategies. Second, each region will meet with its states frequently to identify areas of significant noncompliance, develop strategies to address those areas, and evaluate the effectiveness of those strategies. OECA will assist regions in problem identification, strategy formulation and evaluation, including by providing compliance information available from data systems on a periodic basis.

## **3. & 4.: CLEAN WATER ACT AND SAFE DRINKING WATER ACT PROGRAMS**

The "Water" Program encompasses six separate programs under both the Clean Water Act and the Safe Drinking Water Act. Each program has different characteristics (e.g., some programs have national data bases and some do not), and, as a result, the "core program" varies somewhat from program to program. Therefore, in order to provide clarity, each program is listed separately. This does not signify that the "water program's core activities" are more specific or detailed than the programs under other statutes.

## **3. CLEAN WATER ACT PROGRAMS**



**(A) NPDES and Pretreatment Programs**

Regions should consider all available data in implementing the compliance and enforcement activities described below. Examples of available data are: PCS data, DMRs, OW's "Index of Watershed Indicators," unified watershed assessments, fish advisories, shellfish bed and beach closure information, State 303(d) lists of waters and 305(b) reports, citizen complaints, and referrals from states, etc. Also, Headquarters is currently soliciting input from the regions on refining several targeting tools for the NPDES and pretreatment programs to facilitate the identification of problem facilities.

**Compliance Assistance**

Regions, with the assistance of state agencies, should provide information and technical assistance via seminars, on-site visits, mass mailings, Internet, etc. to the regulated community to ensure that businesses and municipalities understand their regulatory obligations and know how to comply in the most cost-effective way. Regions should identify appropriate opportunities to utilize compliance assistance tools (in accordance with OECA's operating principles), especially where problems involve small businesses or small POTWs (minors) who often have technical difficulty understanding our environmental regulations (e.g., dry cleaners, electroplaters, auto repair/body shops, etc.). In addition, regions should support and encourage state small community environmental compliance assistance programs that are consistent with EPA's November 22, 1995 Policy on Flexible State Enforcement Responses to Small Community Violations.

Regional compliance monitoring personnel should be familiar with all compliance assistance tools (e.g. Compliance Assistance Centers, Sector Notebooks, inspection check lists, etc.). Regions should encourage state and local governments to utilize all of the Compliance Assistance Centers, as appropriate. All centers have information on how to comply with the NPDES program for their particular type of business. Note in particular four new centers that opened in the fall of 1998, the Transportation Compliance Assistance Center (TRANSOURCE) the Local Government Environmental Assistance Network (LGEAN), the Paints and Coatings Center, and ChemAlliance. LGEAN, specifically, is a valuable compliance tool for local governments to utilize. In addition, regions should report on compliance assistance activities: telephone hotlines, workshops/meetings/trainings; compliance tools developed and distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

**Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate,

disclosures submitted under the OECA audit policy and small business policy.

## **Compliance Monitoring**

### **(a) Inspections**

#### **(1) NPDES PROGRAM**

Regions and states must maintain an effective inspection program, and the strategy for ensuring this in every state should be defined in the MOA. It is an Agency goal to provide 100% coverage of all major NPDES facilities and POTWs with approved pretreatment programs or equivalent coverage of a combination of major and priority minor facilities annually. Regions should focus inspections in Clean Water Act priority areas as defined in the MOA. Regions may shift a portion of their total inspection resources from major to minor facilities, particularly in priority watersheds or facilities discharging to impaired waters (e.g. fish advisories, shellfish bed or beach closures, drinking water sources). Since an inspection at a major facility generally requires more resources than an inspection at a minor facility, inspection tradeoffs--that is the number of minor facilities substituted for major facilities--should be at a 2:1 or greater ratio. This ratio is based on previous work load models which averaged the amount of resources needed to conduct major and minor inspections. As we focus on newer sources, such as SSOs, or areas identified in the Clean Water Action Plan, such as beach closures, minor sources will be an important component of our inspection program. The region should briefly explain its inspection targeting process, particularly its rationale for trading off major inspections for minor inspections, in the MOA. Regions proposing to shift inspection resources from majors to minors must ensure that the necessary minor facility information and inspection data is entered into PCS, either by the Region or the State, in order to receive "credit." It is very important that minors data be reported into PCS to reflect our activities, show results and implement the Clean Water Action Plan. Beginning in FY 2000 we will rely solely on minor data entered into PCS to evaluate and report results.

#### **Biosolids**

Although sludge (or biosolids) is not an area of national priority for OECA, we recognize that some regions expend resources conducting sludge inspections. Therefore, regions who are planning to conduct additional sludge inspections at the expense of other CWA core activities should provide a rationale for their investment in this program. Regions should report sludge inspections along with other inspections, where applicable, on the MOA form as part of the end-of-year report.

#### **Performance Expectations**

Regions should make projections in the MOA for both state and federal inspections, identifying the universe of NPDES majors, and projecting the number of majors and the number of minors to be inspected. The projections should be shown as Federal and state by state, as provided in the NPDES inspection chart attached to the MOA guidance.

## (2) PRETREATMENT PROGRAM

Regions and states must maintain an effective inspection program and the strategy for insuring this in every state should be defined in the MOA. In the pretreatment program, Regions must insure coverage in approved programs as well as those where EPA is the control authority. The goal is to annually inspect 100% of the POTWs with approved pretreatment programs in unapproved states, and 100% of the significant industrial users discharging to POTWs without approved programs in unapproved states.

### Performance Expectations

Regions will make projections for both federal (and state as appropriate) and report by state the number of inspections (and % of universe covered) in approved pretreatment programs and the number of inspections (and % universe covered) in nonapproved programs.

(b) Discharge Monitoring Report (DMR) Review/Review of Permit Compliance System (PCS) data, review of other information on compliance available to the region.

Regions should routinely review all DMR reports received for compliance with permit limits. (Note that regions may accomplish this review through a routine screen of the PCS data and reviewing the DMRs themselves as necessary.) Regions also should routinely review data submitted by states to PCS and review other information available to them on a facility's compliance with its permit and other Clean Water Act requirements. There is no reporting associated with this portion of the core program.

### Enforcement Actions

The underlying tenet of the compliance and enforcement program is that each violation deserves a response. The appropriate response to different types of violations is contained in the Enforcement Management System (EMS). Regions are expected to evaluate all violations, determine an appropriate response per the EMS, and take that action. Regions should focus actions in the priority areas listed in the MOA and the President's "Clean Water Action Plan" while maintaining a presence in all water programs.

In addition to initiating new enforcement actions, regions are expected to negotiate settlements and track compliance with consent decrees and with administrative orders and to take all necessary actions to ensure continued compliance with the terms of federal enforcement actions.

### Resolution of SNCs

Regions/states are expected to take timely and appropriate actions on significant noncompliers. Any facility not addressed in a timely and appropriate manner is an exception and should be targeted for federal enforcement. No more than 2 percent of all major facilities should be on the exceptions list at

any one time. Regions not able to commit to this should identify this as an "exception" in their MOA submission and propose an alternative projection.

### **Performance Expectations**

To evaluate the pretreatment program, EPA will consider the following data that is currently reported into PCS: number of SNCs (and % of universe); number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining, with an explanation provided by facility for those remaining on the Exceptions List.

### **Program Leadership and Evaluation**

#### **Data Entry/Data Management**

There are two components to data management -- the programmatic data in the Permit Compliance System (PCS) and the data required to be reported to Docket and in the case conclusion data sheets.

(1) Regions and states are expected to insure that all required data is input into the Permit Compliance System (PCS, including Federal facility data. DMR data entry will be monitored and is expected to be at least at the 95% level for majors. Where activities at majors have been traded off for activities at minors (e.g., inspections), regions and states are expected to input the PCS data for the minors.

If Regions cannot maintain this level, the Region should identify this as an "exception" to the core and indicate what level it will attain.

Headquarters will monitor regional/state data entry quarterly.

(2) Regions are expected to report to PCS and to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions.

### **B. Section 404 ( e.g. Wetlands)**

The following activities are important to achieving the ongoing environmental goal of "no net loss" of wetlands and the goal of the President's "Clean Water Action Plan" to achieve a net increase of 100,000 acres of wetlands per year by 2005.

### **Compliance Assistance**

Regions should target compliance assistance activities towards smaller landowners/farmers who may not fully understand the Section 404 program. Regions should closely coordinate these activities with the other federal agencies which may be involved. In addition, regions should report on compliance assistance activities: telephone hotlines, workshops/meetings/trainings; compliance tools developed and distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. As discussed in the core program definition, regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

Regions should have a process for identifying/targeting/inspecting and otherwise responding to illegal activities. Regions should report quarterly to OECA/ORE/WED on violations and investigations using the format developed during FY 98 and FY 99. During FY 99, a timely and appropriate policy will be developed for the 404 program. Regions will be expected to implement the policy in FY2000/2001. Since only two states have been delegated parts of the Section 404 program, this is primarily a federal effort. The regions must also coordinate, as appropriate, with other federal agencies which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement (e.g., Corps of Engineers, NRCS, Fish and Wildlife Service, etc.)

### **Performance Expectation**

Regions should project and manually report through "the shell" on the number of site visits/inspections in the 404 program. This will be federal only, except Regions II and V should also submit numbers for state inspections/site visits for New Jersey and Michigan, as well as for federal actions.

### **Enforcement Actions**

The underlying tenet of the compliance and enforcement program is that every violation deserves a response. The appropriate response to violations is contained in the Section 404 EMS and other infrastructure improvements which are currently under development jointly by Headquarters and the regions. Headquarters and the regions have developed criteria for selecting and prioritizing cases and regions should now have a strategy in place and be fully implementing the case criteria guidance. In addition to initiating new actions, regions are expected to track compliance with consent decrees and

administrative orders and to take all necessary actions to ensure continued compliance with the terms of federal enforcement actions. To support the goal of the President's "Clean Water Action Plan," whenever appropriate in 404 and non-404 water enforcement settlements, regions should use supplemental environmental projects to restore and enhance wetlands and to create wetland mitigation projects.

### **Program Leadership and Evaluation**

#### **(a) Data Entry/Data Management**

The Section 404 program does not have a national data system. Regional wetlands program managers, however, are expected to report to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions. Regions are also expected to report quarterly to Headquarters (ORE/WED) using the format developed in FY 98 on violations and responses.

#### **(b) Performance Expectation**

At midyear and in end of year reports, as appropriate, regions will describe their review and evaluation of state programs, major findings, and any corrective actions initiated or planned. For federal programs, regions should describe their program and any corrective actions they have initiated or planned.

### **C. Oil Pollution Act (Section 311)**

The OPA program is a federal only program, therefore, all enforcement activities are federal and there is no state oversight component. OPA inspections take place under the responsibility of the Office of Solid Waste and Emergency Response (OSWER).

### **Enforcement Actions**

The underlying tenet of the compliance and enforcement program is that every violation deserves a response. While the OPA program does not have a formal EMS, regions must have a program to identify violations, to prioritize violations for actions, and then to take appropriate actions. Regions are expected to comply with the Section 311 penalty policy issued in FY 98.

In addition to initiating new actions, regions should track compliance with consent decrees and administrative orders and to take all necessary actions to ensure continued compliance with the terms of federal enforcement actions.

### **Program Leadership and Evaluation**

#### **Data Entry/Data Management**

Regions are expected to report to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions. Regions should routinely review the ERNS database on spills to ensure that all spills are being appropriately addressed.

#### **4. SAFE DRINKING WATER ACT PROGRAMS**

##### **(A) Public Water System Supervision (PWSS) Program**

OECA will be seeking input from the Regions and from drinking water stakeholders to develop a strategy to implement the enforcement and compliance recommendations of the calendar year 1996 and 1997 annual National Public Water System Compliance Reports, and how activities to support implementation can be incorporated into each Region's MOA. The general recommendations are included in the descriptions below.

##### **Compliance Assistance**

Regions should target compliance assistance towards smaller drinking water systems, especially those with part-time operators. Data for calendar year 1997 show that 18% of small community water systems committed a major violation of monitoring and reporting requirements, as compared to just 7% of all other community water systems. In the same year, States reported major monitoring and reporting violations at 17% of small transient non-community systems and 21% of non-transient non-community systems, while reporting major monitoring and reporting violations at only 6% and 12% of all other transient non-community and non-transient non-community systems, respectively. Accordingly, Regions should work with the States to increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems' technical and financial capacity to perform the required activities. The total coliform rule, historically the most violated MCL, is another area where compliance assistance to small systems can be expected to produce significant results. Here, Regions should encourage sanitary surveys and circuit riders as means of detecting and avoiding the conditions that lead to microbial contamination. When compliance assistance is not effective, Regions should pursue enforcement actions.

Regions should also focus compliance assistance on provisions of the Disinfectant Byproducts Rule which will become effective in November 2001. This effort will include outreach and education programming to ensure that sources understand the requirements and assistance to help them develop the program and system changes needed to implement the new rule. We encourage Regions to make use of the recently-established Local Government Environmental Assistance Network (LGEAN) as a ready source of compliance assistance information (both from EPA and from its non-governmental partners), and recommend marketing LGEAN to drinking water system operators as a compliance assistance tool. In addition, regions should report on compliance assistance activities: telephone hotlines, workshops/meetings/trainings; compliance tools developed and distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

## **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

## **Compliance Monitoring**

### **(a) Inspections/Sanitary Surveys**

Regions and states should maintain an effective inspection/sanitary survey program and the strategy for ensuring this in every state should be defined in the MOA. Inspection and sanitary surveys should be reported into RECAP. Since all but two jurisdictions have been granted primacy for the drinking water program, this activity is mostly a state activity. Regions with direct implementation programs (Regions III and VIII) and all regions which directly implement the program on Indian lands should report numbers of inspections completed.

### **(b) Review of data in the Safe Drinking Water Information System (SDWIS) and review of other information on compliance available to the Region**

Regions with direct implementation programs are expected to input required data into SDWIS. This is especially important for regions with direct implementation programs on Tribal lands. Data entry for those programs will be monitored quarterly. Regions are expected to routinely review data submitted by states to SDWIS and review other information available to them on a drinking water system's compliance status. No new reporting is required by this measure.

## **Enforcement Actions**

(a) The underlying tenet of the compliance and enforcement program is that each violation deserves a response. The appropriate response to different types of violations is contained in the Enforcement Management System (EMS). Regions should evaluate all violations, determine an appropriate response per the above guidances, and take that action. To support the goal of the President's "Clean Water Action Plan" of ensuring that water is safe to drink, the Regions should evaluate the results of source water assessments and the unified watershed assessments in targeting some enforcement activities in FY00/01 where sources of drinking water are contaminated or threatened.

In addition to initiating new enforcement actions, regions should track compliance with consent decrees and with administrative orders and take all necessary actions to ensure continued compliance with the terms of Federal actions.



### Resolution of SNCs

Regions/states should take timely and appropriate actions on significant noncompliers which appear on the quarterly SNC reports. Any facility not addressed in a timely and appropriate manner is an exception and should be targeted for federal enforcement. Specifically, in evaluating Regional performance, OECA will look at: the number of SNCs (and % of universe); number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining. Information needed to support this is already reported in RECAP and is already required to be reported to SDWIS. Regions not able to commit to this should identify this as an "exception" in their MOA submission and provide an alternative projection.

b) Implementation of the Safe Drinking Water Act Amendments of 1996: These amendments fundamentally changed the drinking water program by providing the Agency and the states new tools, for example, the State Revolving Fund and new enforcement authorities, including administrative order and penalty authority for Federal facilities. Headquarters and the regions have developed implementation plans.

### Performance Expectations

Regions will implement the 1996 amendments consistent with the implementation plans and include Federal facilities as part of other identified drinking water priority activities, conducting EPA inspections at Federal facilities using the newly clarified authorities. Regions should also incorporate a Safe Drinking Water Act component in all regional multi-media inspections of Federal facilities as outlined in the Federal facilities core program section of this MOA guidance. When regions find violations, they should take enforcement action, as appropriate.

### Program Leadership and Evaluation

#### Data Entry/Data Management

Regions and states are expected to ensure that all required data is input into SDWIS, including Federal facilities as applicable. Regions with direct implementation programs, including those on tribal lands, are expected to input the data themselves. If Regions are directly implementing any of the new drinking water regulations, they must ensure that the required data is in SDWIS.

### (B) Underground Injection Control (UIC) Program

#### Compliance Assistance

Regions should target compliance assistance efforts at Class V wells delineated in source water protection areas and other areas where the potential for groundwater contamination is high (e.g. fractured rock and karst areas; sole source aquifers). In addition, regions should report on compliance assistance activities: telephone hotlines, workshops/meetings/trainings; compliance tools developed and

distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

#### **(a) Inspections**

Regions should insure an effective field presence through routine inspections of all classes of wells. The actual number of inspections and the distribution by well class will depend on the region and whether or not all or part of the program has been delegated to the states.

#### **(b) Review of Compliance Information**

Regions should routinely review inspection reports, mechanical integrity test results and other information available on the compliance status of injection wells. Regions should also review other information available to them which suggests the existence of Class V well or wells. Based on review of this information, appropriate inspections or enforcement actions should be targeted.

### **Enforcement Actions**

The underlying tenet of the compliance and enforcement program is that each violation deserves a response. The regions/states are expected to appropriately place SNC facilities that have not been acted on or returned to compliance on the exceptions list, and then address all exceptions. In addition to initiating new enforcement actions, regions should track compliance with consent decrees and with administrative orders and take all necessary actions to ensure continued compliance.

#### **Resolution of SNCs**

Regions/states should take timely and appropriate actions on all significant noncompliers. Any SNC not addressed in a timely and appropriate manner is an exception and should be targeted for federal enforcement. Specifically, in evaluating regional performance, OECA will look specifically at: the number of SNCs ; number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining, with an explanation provided. Regions not able to commit to this should identify this as an "exception" in their MOA

submission and provide an alternative projection.

### **Program Leadership and Evaluation**

#### **Data Entry/Data Management**

There is no UIC national program data base; however, regions are expected to ensure that all required data is input into Docket and that case conclusion data sheets are completed and entered into Docket.

### **5. FIFRA, TSCA, EPCRA CORE PROGRAM**

#### **A. Program Focus and General Expectations for FY 2000/2001 for FIFRA, TSCA, EPCRA FEDERAL Activities**

The focus of the toxics and pesticides compliance and enforcement program for FY 2000-2001 is ensuring the public's right-to-know about chemicals in their environment. EPA and the public rely on the EPCRA Toxic Release Inventory for information on chemicals entering the environment. Other EPCRA requirements provide data which facilitate informed decision-making on exposure and local emergency planning. EPA must ensure that companies report data accurately and within required timeframes. The public's right-to-know is also encompassed in the TSCA regulatory programs for asbestos, PCBs, and lead based paint, as well as core TSCA. Facilities that are potentially subject to core TSCA provisions (TSCA sections 4, 5, 8, 12 and 13) number over 130,000 facilities. Existing and new chemicals manufactured and processed in these facilities may pose significant risks to workers and the environment. Core TSCA is unique in that it relies on companies' submission of data to the Headquarters program office for review and risk analysis, and most of the data is Confidential Business Information, the handling of which is statutorily controlled. Core TSCA also requires investigators with an understanding of chemistry and chemical reactions.

EPA and the public rely on pesticide manufacturers to provide accurate information about pesticides and their associated risks. Unregistered and ineffective antimicrobials, as well as products making false or misleading public health protection claims, pose a potential public health threat when the public is given inaccurate or misleading information which may lead to inappropriate choices. Farm workers using pesticides must be informed about exposure to pesticides that are used on agricultural crops and must be informed how to properly handle and apply pesticides. In addition, residents in urban and residential areas must be protected from illegal distribution, sales, or application of agricultural pesticides to control pests in urban and residential settings.

For FIFRA, the primary focus is on providing assistance/training/oversight to states/tribes carrying out FIFRA related enforcement under cooperative enforcement agreements. This includes issuing credentials as appropriate and providing training and grant oversight. Regions should refer to the Federal facilities section of this attachment (Section 8) for guidance on including Federal facilities in core program activities where applicable. EPA is responsible for enforcing data quality requirements

(GLPs), section 7 establishment registration and the submission of production data, import and export requirements, and the reporting of unreasonable adverse effects under section 6(a)(2) of FIFRA. States conduct product compliance inspections and may take the enforcement action or in some cases, EPA does, e.g., some WPS violations and product cases involving antimicrobials failing efficacy tests. Regarding enforcement of pesticide use provisions, the statute gives primary use enforcement responsibility to the states. EPA has a state oversight and training role, as well as a compliance assistance role.

### **Federal Compliance Assistance**

In general, compliance assistance should be a focus in follow up to the issuance of new or amended regulations, and will also be incorporated into national sector, or other, compliance and enforcement initiatives as appropriate.

With regard to initiatives, these are collaboratively developed by Headquarters and the regions/states. Examples of recent compliance assistance initiatives include the Chemical Industry Sector Strategy's EPCRA project, EPCRA 313 reporting guidance for specific industry sectors (food processing, rubber and plastics, and the semiconductor industries), and Internet access to comparative TRI data from facilities in five sectors via the Sector Facility Indexing Project. The strategies for previous initiatives have also included a focused compliance assistance period with a recommended time frame for targeted assistance to ensure that the regulated community has the information which they need to comply. (Note: SFIP is a regional data analysis and targeting tool. The information in SFIP could be used by a region to provide "compliance assistance" to specific sectors by analyzing the relative quantities of data in the system and identifying the better facilities).

For the chemical industry, the regions should promote and utilize, where appropriate, ChemAlliance, the new compliance assistance center for the chemical industry. ChemAlliance can be used by Headquarters, the regions and states as another tool to provide multi-media compliance assistance, including information related to TSCA, EPCRA and FIFRA. Appropriate Regionally developed compliance assistance materials can also be made available through ChemAlliance.

For FIFRA, the National Agriculture Compliance Assistance Center will continue to develop and provide compliance assistance materials related to FIFRA, Worker Protection requirements, and other EPA requirements that impact the agricultural community. Regions should familiarize themselves with the material offered by the center and provide compliance assistance materials as they give presentations to ag groups/trade associations. Priority areas for compliance assistance activities include FIFRA section 6(a)(2) requirements, i.e., unreasonable adverse effects reporting, and low income communities as part of the urban initiative. In addition, regions should review compliance data to identify compliance assistance needs and provide input to the Center and the Agriculture Branch in OC. Regions are also encouraged to provide the Center with outreach materials that they/their States develop. Another area for compliance assistance relates to citizen complaints and ensuring that those use cases involving allegations of significant harm are tracked under FIFRA section 27 and adequately responded to. In addition, regions should report on compliance assistance activities: telephone hotlines,

workshops/meetings/trainings; compliance tools developed and distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

### **Federal Compliance Incentives**

Regions should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy. Also, regions should work collaboratively with Headquarters on other compliance incentives involving multi-regional cases and/or sector approaches.

### **Federal Compliance Monitoring**

To maintain an effective compliance monitoring program, regions must allocate limited resources as effectively as possible, and trade-offs will have to be made. However, to the maximum extent possible, regions should target and conduct inspections and investigations (including show cause letters or subpoenas where appropriate) for:

EPCRA - EPCRA 304/CERCLA 103; EPCRA 313 - data quality; non-reporters; first-time reporters in July 1999

FIFRA - antimicrobials; labeling investigations, especially for WPS; Section 7; point-of-entry, dealers, or RUP dealers; urban pesticides

TSCA - lead based paint section 1018, and 402/404/406, asbestos - AHERA; asbestos MAP; PCBs; lead-based paint- 1018 and 402/404/406; core TSCA

Inspections are expected to be completed for every core program area identified above. With the exception of the TSCA lead based paint program, Headquarters expects regions to maintain inspections at FY 97 levels, assuming that the inspections have proven valuable in identifying areas of noncompliance and supporting enforcement efforts. If this is not the case, Headquarters should be informed in order to begin assessing why the inspections have not been effective. Regions should ensure inspection coverage in states without EPA enforcement cooperative agreements. Regions are expected to track and prioritize tips/complaints, and follow-up, as needed. ("Follow-up" means that the region needs to evaluate the tip/complaint to determine the appropriate next step, and either: 1) refer the tip/complaint to a state as appropriate and track it through resolution consistent with national guidance; OR 2) obtain additional information through federal investigation/show cause letter if necessary and issue appropriate federal action as appropriate.) Regions are also expected to follow-up on all referrals received from Headquarters and states.

With regard to the TSCA lead based paint program, there are several new or relatively new rules within this program which merit increased attention and an increased number of inspections. The regions should respond to all tips and complaints for potential violations of the section 1018 notification and disclosure rule, the section 402 abatement, training and certification rule, and the section 406

renovator and remodeler rule in those states without authorized programs. The regions should contact Headquarters if they need assistance with follow-up to tips and complaints. In those regions where most of the 402 program workload has been delegated to authorized states, the regions should continue to conduct targeted section 1018 inspections and increase their number of inspections. In those states without authorized 402 programs, regions should conduct 402 inspections of training providers (after March 1999) and inspections of work sites (after August 2000.)

### **Federal Enforcement Actions**

Regions are expected to respond to violations in a timely manner, and in accordance with national policy as contained in the individual program enforcement response policies. All self-disclosures and referrals should be evaluated and brought to closure in accordance with national policies. Regions should reduce the federal case backlog, if any (i.e. settle or litigate cases issued in years prior to FY 2000, and ensure investigation and issuance of appropriate action for any open tips/complaints/ referrals received by EPA in years prior to FY 2000). In their MOA, each region should indicate their intent with regard to how much of the Federal backlog they plan to reduce.

### **Program Leadership and Evaluation**

Headquarters has general expectations with regard to data entry, use of press releases, and assessment of state performance under enforcement cooperative agreements.

**DATA ENTRY:** It is critical that the regions enter all federal and state data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the TSCA, FIFRA, & EPCRA 313 National Compliance Data Base (NCDB). It is important for timely data entry to occur, for purposes of national analysis and publication of data as appropriate. Headquarters will be tracking data entry and discussing it with regional management. Regions should also enter data for EPCRA 301-312 into the National Enforcement Compliance Tracking and Reporting System (NECTAR) database.

**PRESS RELEASES:** The regions should use press releases for regional activities which are not part of national initiatives, as appropriate, in order to promote further compliance.

**STATE COOPERATIVE AGREEMENTS:** OECA will provide a draft pesticides and toxics state enforcement cooperative agreement guidance for review and comment separately from the MOA guidance. This guidance, once finalized, should be followed by the EPA Regional offices when negotiating enforcement cooperative agreement commitments. For purposes of the MOA discussions, OECA is looking for each region's projections on the number of FIFRA, asbestos, lead 402, and PCB inspections which they will be using as the basis for negotiations with each of their state enforcement grantees. (Refer to Section 1., EPA-State Coordination on Workplanning and Oversight, for additional information).

## **6. AIR PROGRAM**

The CAA core program covers activities relating to Section 110 (SIPs/FIPs/TIPs), Section 183 (e) Consumer Product Rules, Acid Rain, Title V Operating Permits, Stratospheric Ozone Protection, NSPS, NESHAP/MACT, PSD/NSR requirements. Regions should refer to the Federal facilities section of this attachment (Section 8) for guidance on including Federal facilities in core program activities where applicable.

### **Compliance Assistance**

Regions, with the assistance of state, local, or tribal agencies, should provide cross-media information and technical assistance via seminars, on-site visits, mass mailings, Internet, etc. to the regulated community to ensure that businesses understand their regulatory obligations and know how to comply in the most cost-effective way. Regions should target the majority of their compliance assistance efforts toward small businesses who often have difficulty understanding our environmental regulations (e.g., dry cleaners, electroplaters, auto repair/body shops, HVAC technicians, etc.). This includes the use of the Clean Air Applicability Index to provide guidance on past determinations. Regions should work with their CAA Section 507 Small Business Assistance Programs in the delivery of compliance assistance.

Regional compliance monitoring personnel should be familiar with all compliance assistance tools (e.g., Compliance Assistance Centers, Sector Notebooks, inspection check lists, past root cause analysis, etc.) Regions should encourage applicable facilities and state, local, and tribal agency personnel to utilize the Compliance Assistance centers. All Centers have information on how to comply with the Clean Air Act. Four new centers opened in the fall of 1998, the Transportation Compliance Assistance Center (TRANSOURCE), the Local Government Environmental Assistance Network (LGEAN), the Paints and Coatings Center, and ChemAlliance.

### **Compliance Incentives**

Regions, with the assistance of state, local, and tribal agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

Regions, with the assistance of state, local, or tribal agencies, should strive to maintain an adequate compliance monitoring presence among all air programs. States, local, and tribal agencies will have primary responsibility for the delegated programs and EPA will be responsible for the non-delegated programs (e.g. asbestos and radionuclide NESHAPs, CFCs, certain NSPS and MACT), and for inspections of facilities on tribal lands. The emphasis for FY 2000/2001 is determining compliance through investigations, which may include in-depth record reviews (e.g., Title V, NSPS), fence-line

pollution measurements using UV-DOAS or other sampling method to identify sources that may present an imminent and substantial endangerment under CAA section 303, and on-site inspections. The regions should continue to review Excess Emissions Reports from CEMS (title V and acid rain sources); oversee performance tests and review test reports; respond to citizen complaints; review records/notifications; and make compliance determinations from information gathered as part of their compliance monitoring program. Specific goals are as follows:

1. **Inspections.** Inspections of all sources in the region should be at least Level II. Regions and states, local, or tribal agencies should use the Compliance Monitoring Strategy for targeting of sources and to determine the type and number of inspections they will conduct. Headquarters will use FY 98 and FY 99 numbers as a basis for determining a target inspection level in FY 2000 and FY 2001 with the input of regional, state and Headquarters representatives. In making this determination, Headquarters will account for its shift in emphasis towards investigations and away from inspections, by giving additional weight towards investigations.

Regions and state, local, or tribal agencies should continue to report into RECAP. In the MOA CAA inspection commitment chart, regions should give an estimate of the total number of state and federal inspections, and provide estimates for subsets of this total that include inspections of Title V sources, synthetic minor sources, Air Toxics sources, etc.

2. **Investigations.** Regions in cooperation with participating state, local, or tribal agencies should initiate or continue conducting an average of 2 in-depth investigations per state per year. (For further information refer to the PSD/NSR priority). Such investigations should include inspections, performance tests, and detailed document/data reviews as appropriate. Regions should estimate the number and type of CAA investigations expected in the MOA chart for CAA enforcement and compliance activities. For each investigation cited in the chart, regions should document the following items in their MOA submission:

- Types of violations sought
- Number of compliance inspections expected as part of the CAA investigations process

3. **Source testing.** Within the FY 98/99 period, the goal was to ensure that performance tests were performed on significant units for all environmentally significant pollutants at all major sources which had not been tested within 3 years of the time FY 98/99 MOA commitments were made. During the first half of FY 2000, regions should provide a report on the results of all tests conducted in accordance with this agreement. Alternatively, regions may simply have states include this information in AFS. For source tests conducted during FY 2000 and 2001, regions should ensure that states enter the appropriate test result information into AFS. Regions should estimate number of performance tests they or their state, local, or tribal agencies will require in the MOA chart for CAA enforcement and compliance activities.

4. **Annual Compliance Certifications.** By the end of FY 2000, the goal is for the regions to have reviewed compliance certifications for all Title V permit applications. Throughout FY 2000/2001,



regions should review all Title V annual compliance certifications they receive and report on the number of certifications reviewed. In addition, regions should give special scrutiny to Title V permits from sources that report full compliance, especially in the source categories targeted as priorities by OECA. Regions should carefully analyze 5% of the Title V permits they process each year, thus helping to target the investigations cited in goal #2, above. Regions should also compare the information in the compliance certifications to the compliance status reported for sources in AFS to ensure their consistency.

### **Enforcement Actions**

Headquarters expects that federal enforcement will be considered where states fail to take appropriate action. High Priority Violators should be addressed in accordance with the policy on Timely and Appropriate (T+A) Enforcement Response to High Priority Violations (HPVs), and the "no surprises" policy. In addition, regions should take appropriate federal enforcement actions in situations where federal involvement could be particularly helpful in bringing the matter to a successful and environmentally beneficial resolution (e.g., a company with violations in more than one state, transboundary issues, particularly recalcitrant violators, etc.) or is essential to ensure fair and equal environmental protection mandated by law.

1) For all cases newly listed in accordance with the "Policy on T+A Enforcement Response to HPVs" during FY2000-01, regions should strictly adhere to the requirements of the Policy.

a) Regions should ensure appropriate enforcement actions are taken for violations reported on annual compliance certifications.

b) Regions should ensure appropriate enforcement actions are taken for synthetic minor violations.

2) For older cases, regions should ensure that 33 percent of all High Priority Violators, and all that are 3 years old or older, are addressed each year. Regions should work with their state, local, or tribal agency partners to implement the EPA policy on "Timely and Appropriate (T+A) Enforcement Response to High Priority Violations," and identify major obstacles or conflicting state, local, or tribal priorities that impede achieving this goal.

3) Regions should evaluate and bring to closure 100% of any self-disclosures received by a Region, consistent with national policy.

4) Regions should reduce their Federal case backlog, if any (i.e. settle or litigate cases issued in years prior to FY 99, and ensure investigation and issuance of appropriate action for any open tips/complaints/referrals received by EPA in years prior to FY 99). In their MOA, each region should indicate their intent with regard to the extent of the proposed reduction (e.g. 75% or other percentage).

5) Regions should follow OECA Nationally Significant Issues (NSI) guidance in all cases as applicable.

6) Regions should aggressively exercise EPA's 1997 clarified penalty authority against Federal agencies for Clean Air Act violations in appropriate circumstances.

### **Program Leadership and Evaluation**

As part of the core, regions will also be involved in program planning--strategic planning, MOA, budgeting, accomplishments reports, measuring results, etc., grants/contracts--negotiations/administration and oversight of contract/grants other than state/local/tribal grants, training-- conducting inspector training and personal development, and participating in reviews of SIPs/FIPs/TIPs, regulations, policies, guidance, delegations, etc. Regions should continue to communicate with communities (regulated and public) and respond to FOIAs, Congressionals, phone calls, press releases, etc. Headquarters has the following general expectations with regard to data entry, use of press releases, and assessment of state performance:

#### **1. Data entry**

Regions should require that states, local, or tribal agencies enter all necessary information into the AFS data system to provide accurate and timely information, especially regarding:

- inspection dates and compliance status after inspection, including date of violation, if appropriate
- enforcement actions (NOVs, orders, civil actions, criminal actions, etc) and date of action
- number of settlements and date settlement entered, including penalties accounting for economic benefit

Timely and accurate enforcement data entry is extremely important for purposes of national analysis and publication of data, as appropriate. Accordingly, regions should include adequate data entry as a requirement for a portion of each state's or local or tribal agency's Section 105 grant. Headquarters will be tracking data entry and discussing it with regional management.

#### **2. Press releases**

When appropriate, regions should utilize press releases to highlight regional activities that are not part of national initiatives, in order to promote further compliance. CFC and asbestos program enforcement should focus on ensuring deterrence through a few targeted, highly publicized enforcement actions, rather than a large number of inspections.

#### **3. State local or tribal performance assessment**

Negotiations and development of an agreed upon workplan with state, local, or tribal agencies

on enforcement activities, and assessment of their performance is critical if resources are to be used as effectively as possible. Regions should assess the adequacy of state, local, and tribal agency enforcement programs, particularly with respect to appropriate penalties for High Priority Violators and identification of High Priority Violators, including quarterly/annual reviews; file audits; oversight inspections, etc. Regions will be negotiating PPAs, compliance assurance agreements, SEAs or state/local/tribal grant workplans, which will ensure adequate state, local, and tribal enforcement in all delegated areas, and include federal roles and responsibilities. These negotiations should be consistent with the principles identified in the discussion of joint planning and priority setting and worksharing identified in this guidance.

## **7. RCRA HAZARDOUS WASTE PROGRAM**

EPA is committed to ensuring that hazardous wastes are managed in manners that are protective of human health and the environment. Agency targeting, compliance monitoring, and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment. For example, the earlier identified RCRA priority – permit evaders – will include illegal (e.g., dilution) hazardous waste treatment practices, and wastes that are no longer exempt under the Bevill amendment. Additionally, this focus will include companies that have sought to include themselves within the ambit of various exceptions or exemptions to the RCRA Subtitle C system but failed to meet the terms of those exceptions or exemptions. These efforts must and will ensure that RCRA-regulated facilities properly identify, manage, and dispose of their waste in accordance with applicable environmental laws.

The goal of state and federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement activities will complement state activities, where and as appropriate. These state-federal compliance assurance and enforcement activities will provide a credible deterrent to polluters and provide incentives to achieve a greater level of compliance with environmental laws and regulations. These activities will include traditional and “beyond compliance” approaches (e.g., where appropriate, settlement agreements with supplemental environmental projects that reduce or eliminate emissions or discharges of certain toxic materials). Additionally, state and federal activities facilitate the accomplishment of GPRA and EPA Strategic Plan-related commitments. Regions

should refer to the Federal facilities section of this attachment (Section 8) for guidance on including Federal facilities in core program activities where applicable.

### **Compliance Assistance**

Compliance assistance activities should focus on newly regulated handlers, handlers subject to new regulations, small businesses in the priority industrial sectors (i.e., metal services entities), and other small businesses with compliance problems. No performance goal is provided. However, a report should be submitted at the end of the year for these activities. Additionally, appropriate data should be entered into RCRIS (e.g., use the code “CAV” for compliance assistance visits).

### Compliance Incentives

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy. Additionally, appropriate data should be entered in RCRIS (e.g. use the code "FSD" for facility disclosures).

### Compliance Monitoring

The RCRA enforcement core program includes the compliance monitoring activities set forth in Tables I and II (pages 26 and 27). Both state and federal compliance monitoring activities may be required in implementing the activities in Table I (i.e., maintaining the annual level of generator inspections). To facilitate accomplishment of Agency FY 2000/2001 priority activities, achievement of the level playing field principle and oversight of state compliance assurance and monitoring activities, EPA regions should maintain a federal presence in the core program, conducting the compliance monitoring activities set forth in Table II. The regions (in consultation with OECA) may conduct fewer or additional compliance monitoring activities if it is determined that such activities are warranted (based on the criteria listed below).

The states and EPA regions should work together to determine the appropriate mix of federal and state compliance monitoring activities to meet core program activities. In making its determinations, each region should examine the compliance status within its geographic purview. In consultation with states, affected Indian tribes, and OECA, the following criteria should be used (as appropriate) to determine the appropriate field presence and create a credible deterrence:

- ▶ "Feedback" received from external and internal stakeholders (i.e., environmental justice entities, Inspector General findings, citizens and community groups) regarding the quality of federal and state enforcement programs;
- ▶ Use (and frequency) of appropriate sanctions ( e.g. administrative orders) to create a deterrence;
- ▶ The level of compliance monitoring activities needed to create a credible deterrent;
- ▶ Abilities of state and EPA enforcement programs to identify violations and violators of concern and take timely and appropriate responses to non-compliance in accordance with criteria set forth in the March 1996 RCRA Enforcement Response Policy;
- ▶ Trends in compliance shown by performance measures and other indicators (i.e., SNC rates, rates of compliance) relative to national and regional levels;

- ▶ The degree to which a given enforcement program utilizes integrated (i.e., multi-media) strategies in determining priorities and implementing its compliance assurance and enforcement activities;
- ▶ “Feedback” from joint or “side-by-side” (federal and state) compliance monitoring activities;
- ▶ State environmental program review/audit findings and conclusions;
- ▶ Current regional compliance assurance and enforcement commitments reflected in state-EPA workshare agreements;
- ▶ EPA activities in fulfillment of National EPA priorities; and
- ▶ Other criteria (i.e., state priorities relative to EPA priorities).

Table I - Combined State and Federal Core Activities

Statutory mandated inspections	Inspect ANNUALLY: <ul style="list-style-type: none"> <li>- Federal facilities under SWDA §3007(c), and as amended by the FFCA</li> <li>- State and local facilities identified under SWDA § 3007(d)</li> </ul> Inspect ONCE EVERY TWO YEARS: <ul style="list-style-type: none"> <li>- Treatment, storage and disposal facilities under SWDA §3007(e)</li> </ul> Inspect ONCE EVERY THREE YEARS <sup>1</sup> : <ul style="list-style-type: none"> <li>- Land disposal facilities under SWDA §3007(e)</li> </ul>
Generators (LQGs)	Inspect annually 20% (minimum) of the large quantity generator universe <sup>2</sup>
Generators (SQGs)	Inspect annually * % (minimum) of the small quantity generator universe <sup>3</sup>

- 1 Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility's ground water monitoring system is adequately designed and installed, an O&M inspection may become the appropriate ground water monitoring inspection. More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems; significant changes to ground water monitoring system; and actual or suspected changes in local ground water regimes.
- 2 States with a relatively small universe should inspect a higher percentage of its universe.
- 3(\*) States and regions should determine the appropriate levels.

States and regions should note that expectations relative to large quantity generator inspections have changed. This is due to several factors. First, we believe (e.g., based on BRS data) that the actual universe is significantly less than we previously determined (when the previous expectations (8%) were developed). Additionally, states and regions are identifying significant issues at large quantity generator facilities- issues which warrant a greater focus on these types of facilities.

Table II - Federal Core Activities

Facilities/Units that are not Part of an Authorized State Program	<p>Inspect ANNUALLY:</p> <ul style="list-style-type: none"> <li>- Federal facilities under SWDA §3007(c), and as incorporated by the FFCA</li> <li>- State and local facilities identified under SWDA § 3007(d)</li> </ul> <p>Inspect ONCE EVERY TWO YEARS:</p> <ul style="list-style-type: none"> <li>- Treatment, storage and disposal facilities under SWDA §3007(e)</li> </ul> <p>Inspect ONCE EVERY THREE YEARS<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>- Land disposal facilities under SWDA §3007(e)</li> </ul> <p>(At the region's discretion, the region may enter into an agreement with an unauthorized state under which the state would do some of these inspections under their state law).</p>
Generator	<p>Annually inspect at least 6 generators per state.</p> <p>(The regions are encouraged to perform these inspections: in community-based areas, priority sectors, and/or in support of EPA National initiatives; to support state referrals; to address illegal recycling and Bevill issues, entities with violations in more than one state, transboundary issues, particularly recalcitrant violators; etc.)</p>
Treatment, Storage, Disposal Facilities that are part of an Authorized State Program	<p>Annually inspect at least 2 TSDs per state.</p> <p>(The regions are encouraged to perform these inspections: in community-based areas, priority sectors, and/or in support of EPA National initiatives; to support state referrals; to address illegal recycling and Bevill issues, entities with violations in more than one state, transboundary issues, particularly recalcitrant violators; etc.)</p>
Other Facilities	<p>Inspections supporting citizen complaint or criminal investigations; off-site policy-related inspections; corrective action inspections, oversight inspections, non-notifier-related inspections, etc.</p>

- 1 Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility's ground water monitoring system is adequately designed and installed, an O&M inspection may become the appropriate ground water monitoring inspection. More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems; significant changes to ground water monitoring system; and actual or suspected changes in local ground water regimes.

**Enforcement Activities**

- a) In addition to the general core program activities listed earlier, the RCRA enforcement core program consists of complying with the 1996 RCRA Enforcement Response Policy (ERP). This includes: 1) appropriately classifying all facilities meeting the definition of a significant non-complier; 2) taking timely and appropriate enforcement actions; and 3) entering all appropriate data into RCRIS in a timely and appropriate manner.

In addition, Regions should take appropriate federal enforcement actions in situations where federal involvement is necessary (i.e., to address public health and environmental concerns, to level the playing field, and to achieve National priorities and initiatives, addressing environmental justice concerns). Federal enforcement could be particularly helpful in bringing complex matters to a successful and environmentally beneficial resolution (e.g., illegal recycling violations, Bevill issues, a company with violations in more than one state, trans-boundary issues, particularly recalcitrant violators, etc) or is essential to ensure fair and equal environmental protection mandated by law.

- b) Evaluate and bring to closure in a timely manner 100% of any self-disclosures received by a region consistent with national policy.
- c) Significantly reduce any federal case backlogs (i.e. settle or litigate cases issued in years prior to FY 2000, and ensure investigation and issuance of appropriate action for open tips, citizen complaints, and/or state referrals received by EPA in years prior to FY 2000). In their draft MOA, each region should indicate their intent with regard to the extent of the proposed reduction (e.g. 75% or other percentage).
- d) Follow OECA Nationally Significant Issues (NSI) guidance in all cases as applicable.
- e) Finally, we expect that the regions will invest compliance monitoring resources to support efforts to develop enforcement actions against significant non-compliers with violations in more than one state.

**Program Leadership and Evaluation**

**DATA ENTRY:** The following RCRIS data elements are still considered core to the RCRA enforcement program and must be entered into RCRIS in a timely manner by both federal and state enforcement personnel to accurately reflect their activities:

- 1) evaluation core elements  
Please note, the regions are reminded of the importance of entering and/or updating facility SIC code information and the SNC determination in this segment.
- 2) violation core elements
- 3) enforcement core elements



**STATE OVERSIGHT:** The level playing field principle requires that individual facilities or industrial sectors not be allowed to operate illegally outside of program requirements based on different interpretations of the law. EPA, through oversight and other federal compliance assurance and enforcement activities) will play a leadership role in implementing of this principle. Variations in policy interpretation and program implementation which undermine this principle should be identified and addressed in a timely and appropriate manner. Regions are expected to ensure that quality RCRA enforcement and compliance programs are maintained through traditional state oversight activities, workshare agreements with states, and independent EPA compliance assurance and enforcement activities.

### **RCRA Underground Storage Tank Program**

EPA considers implementation of the UST 1998 requirements for upgrading, replacing, or closing old tanks as an important activity to protect human health and the environment. Beginning December 23, 1998, all substandard USTs should have been upgraded (by adding spill, overfill, and corrosion protection) replaced or properly closed (either temporarily or permanently.) As of December 22, 1999, all UST systems that were in temporary closure should be either permanently closed, upgraded, or replaced. Regions should also maintain an enforcement presence concerning leak detection and financial assurance violations. USTs that do not meet these requirements are in violation of federal and state laws.

### **Compliance Assistance**

States and EPA have done extensive outreach to UST owners and operators over the past 10 years. Additional investments in outreach--except in conjunction with compliance monitoring--are likely to have marginal value (except on Indian lands and for low enforcement priority entities). Regions should encourage state and local governments to utilize all of the Compliance Assistance Centers, as appropriate. All centers have information related to the UST program for their particular type of business. Note in particular four new centers that opened in the fall of 1998, the Transportation Compliance Assistance Center (TRANSOURCE) the Local Government Environmental Assistance Network (LGEAN), the Paints and Coatings Center and ChemAlliance.

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

Regions should work with states to assure compliance with UST requirements. EPA efforts should be focused on states where compliance rates are lowest or states' compliance monitoring and enforcement programs are a concern. EPA activities should focus on the requirements for protection against spills, overfills, and corrosion, leak detection and financial assurance. Generally, Regions should promote and enforce compliance with UST requirements on Indian lands.

### **Performance Expectations**

Regions should provide the number of UST facilities inspected (by the region per state) and the number of UST facilities inspected by the region in Indian country. Also, provide the numbers of the following: field citations issued, field citations settled, administrative complaints/orders issued, administrative complaints/orders settled, and self disclosures received.

### **State Support and Oversight**

Regions will work with states to help them strengthen their enforcement programs, increase their field presence, and improve their collection and management of compliance and enforcement data.

### **Enforcement Actions**

Regions should take prompt and effective action on UST violations discovered, particularly those most directly related to protection of health and the environment. Generally, administrative, or judicial complaints or orders should be issued.

## **8. FEDERAL ACTIVITIES PROGRAM**

The Federal activities core program for FY 2000/2001 is built around the following major areas:  
NEPA:

- o -- Fulfill Agency obligations under Section 309 of the Clean Air Act, the National Environmental Policy Act, and related laws, directives and Executive Orders. (All regions).

International:

- o -- Participate in meeting the multimedia objectives for enforcement and compliance cooperation listed in the U.S./Mexico Border XXI plan. (Region VI and Region IX).
- Participate in efforts to improve colonias environmental conditions. (Region VI).
- Participate in enforcement and compliance cooperative efforts relating to transboundary compliance monitoring on the U.S. borders for hazardous waste and CFCs. (All regions).
- Participate in focused efforts in conjunction with Mexico and Canada to enforce domestic laws controlling selected chemicals (e.g., PCBs, mercury). (All regions).

The NEPA activities are based on the 1996 Environmental Review and Coordination (ER&C) Workload Model, against which regions were given resources to carry out these programs. The International Program commitment requests are tied to resources accorded the Agency for implementation of the NAFTA environmental side-agreement, and the U.S.-Mexico Border XXI agreement.

The Federal activities programs are included under Goal 9, Objective 1 (Ensure Federal Actions are Consistent with Goals) and Objective 2 (Enforcement and Compliance with Other Countries).

**Objective 1 (Ensure Federal Actions are Consistent with Goals)**

NEPA / CAA §309 Review: Regional commitments to carry out EPA's responsibilities to review and comment on major actions taken by other Federal agencies and by EPA to ensure that adverse effects are identified and are either eliminated or mitigated.

NEPA Compliance and "Cross-cutters": Regional commitments to carry out EPA's responsibilities to comply with NEPA and so-called "cross-cutters" (e.g., Endangered Species Act, National Historic Preservation Act, Executive Orders on wetlands, flood plains, and farmland).

**Performance Goals**

Regions should review 100% of major proposed Federal actions subject to NEPA and successfully mitigate 70% of identified significant environmental impacts (i.e., those requiring EPA follow-up) through interagency negotiations. Regions should review and document 100% of water treatment facility and New Source NPDES permits subject to NEPA and ensure projects meet all water quality requirements.

**Objective 2 (Enforcement and Compliance with Other Countries)**

International Programs: The majority of requested commitments fall to Regions VI and IX for U.S. Mexico border work in connection with Border XXI and NAFTA-related work. The Agency has announced an Agency-wide Multimedia Strategy for Priority Persistent, Bio-accumulative and Toxic (PBT) chemicals. OECA's support for the PBT initiative will include support for the commitments of Canada, Mexico and the U.S. to address the Sound Management of Chemicals (SMOC) under the North American Agreement for Environmental Cooperation (NAAEC). This work will begin with a focus on PCB's and mercury, and expand to other chemicals in accordance with priorities established in the SMOC process.

**9. FEDERAL FACILITIES PROGRAM**

In order to complete the core program requirements for the Federal facilities enforcement and compliance program, Regional staff, including Federal Facility Coordinators, media program and Regional Counsel staff, where appropriate, are expected to undertake the following activities.

**Compliance Assistance**

- continue to target compliance assistance activities at DOI facilities and other Civilian Federal Agencies identified in FFEO targeting guidance and
- continue to provide compliance assistance efforts at all Federal agencies through meetings, conferences, publications, training; and
- continue to advocate environmental management reviews for Federal facilities and conduct at least three EMRs per fiscal year (assuming three facilities volunteer for EMRs and that travel and contract funds, if necessary, are available).

**Compliance Incentives**

Regions should work with their Federal facilities to promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy. Regions should also actively support Project XL and other reinvention initiatives with Federal agencies.

**Compliance Monitoring**

- have a process for identifying/targeting/inspecting and otherwise responding to violations at Federal facilities;
- continue to conduct at least two multi-media inspections each fiscal year and include a CAA, SDWA, and UST component in those inspections;
- increase media program inspections at Federal facilities in those areas where EPA has new or clarified enforcement authorities against Federal facilities (e.g., SDWA, CAA, UST and TSCA Title IV);
- continue to aggressively seek reimbursement for inspection costs of annual RCRA inspections at Federal TSDs;
- include RCRA 6002 inspections at Federal facilities in accordance with future guidance to be issued by FFEO and report results of 6002 inspections to FFEO;
- continue to include Federal facilities as part of strategies to address media-specific MOA priorities, including significant Federal facilities located in place-based priority areas or within other significant sectors; and
- conduct EPCRA inspections at Federal facilities to determine compliance with EPCRA sections 301 through 313, per the mandate of E.O. 12856.

**Enforcement Actions**

- continue to lead and support enforcement negotiations, litigation and oversight at Federal facilities; and
- utilize as appropriate, any new or clarified penalty authorities (e.g., CAA, SDWA and

any other new authorities) and encourage referrals of cases from States that do not have full enforcement authority (e.g., CAA and UST).

### **Program Leadership and Evaluation**

- continue to utilize and efficiently manage and track Federal facility resources, particularly FTE usage and extramural funding provided by FFEO/HQ;
- continue to actively utilize and maintain IDEA/WIN;
- continue to provide quarterly environmental compliance status reports to the Federal agencies in their Region and assist in resolving discrepancies;
- continue to provide RECAP information to FFEO/HQ; and
- review and comment upon, as appropriate, high priority FEDPLAN projects specified in guidance from FFEO.

### **10. MULTIMEDIA PROGRAM**

The multimedia enforcement programs in existence at Headquarters and within each region are designed to foster a comprehensive approach to the resolution of environmental problems. "Comprehensive" means that applicable provisions of all environmental laws are used to achieve broad-based environmental benefits. This approach recognizes that many facilities and companies are operating in violation of more than one environmental statute. A multimedia strategy to target and address compliance problems and environmental harm results in a more effective overall management of a facility's or a company's environmental liabilities and is ultimately more cost-effective than bringing two or more independent media-specific enforcement actions. Multimedia-focused activities, including enforcement actions, reflect the goals of federal reinvention and underlie much of the Agency's enforcement reorganization. Moving multimedia enforcement to the core program recognizes the experience gained, successes generated and resources already committed to implement this program.

### **Compliance Assistance**

The areas that Headquarters believes warrant compliance assistance have been identified within specific program discussions. The primary focus of the federal multimedia program should be on compliance monitoring and enforcement, rather than compliance assistance. However, the results of a multimedia analysis of specific facilities or entire companies might prove useful in planning future compliance assistance activities.

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by

regulatory agencies for enforcement investigation or response. Regions should consider and follow-up

on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

The multimedia program will rely on the compliance monitoring efforts in existence for each media program. However, each region's multimedia targeting strategy and operational plan (see paragraph four below) should establish protocols for coordinating multimedia investigations and actions among the individual media programs. Headquarters hopes to assist the regions in promoting a process-based approach as well as a more targeted and efficient approach to multimedia inspections in general.

Participation in cases developed under the NESS protocols (see paragraph b below) could entail the dedication and possible reprogramming of compliance monitoring resources.

### **Enforcement Actions**

#### **(a) General Approach**

The multimedia or cross-statutory approach to case development can be employed in the context of three basic types of enforcement actions:

Against single facilities: entire industrial processes at a facility may be examined as a whole;

Against entire companies, where violations of different statutes that occur at various facilities indicate ineffective corporate-wide management of environmental compliance; and

Geographically based enforcement efforts arising from a comprehensive multimedia analysis of the environmental problem(s) in a given area (enforcement activities resulting from this analysis may be single or cross-media).

Regions will be expected to continue to develop and refine their multimedia targeting strategy and operational plan for initiation of multimedia enforcement activities. Elements of this plan should include projected multimedia inspection and case development training, projected numbers of multimedia inspections and projected numbers of multimedia cases. Use of a multimedia checklist is not considered to be a multimedia inspection, but a tool for identification of potential multimedia targets. Each region is expected to use 15 percent of its compliance monitoring and enforcement resources toward multimedia inspections and subsequent actions. If this is not the case, the region should identify this as an exception and indicate what it expects to do. This resource commitment should not entail a significant reprogramming of resources, but rather a greater effort to coordinate single media activities to result in multimedia actions. It is anticipated that the elements of the plan and resource commitment will generate significant administrative and/or judicial multimedia enforcement actions in FY 2000. (Note: The 15 percent figure is meant to include a wide array of multimedia activities, including participation in the NESS-derived cases as discussed below. We hope that by specifying a precise figure in this document we will generate a meaningful discussion of resource use and coordination for

multimedia efforts.)

(b) National Enforcement Screening Strategy (NESS)

Each region should support the National Enforcement Screening Strategy (NESS) by participating in the initial facility screening exercise and to an increasing degree as facilities in the national strategy are identified. This includes case research activities, multimedia inspections of NESS facilities, and leading and/or participating in case development and litigation teams, as appropriate. Once the NESS selection process for identifying companies for a national enforcement investigation is completed, the region must determine the level of effort required for its participation. At that time it should negotiate the resource allocations necessary to be made in the MOA to accommodate participation in NESS.

**Program Leadership and Evaluation**

(a) Data Entry/Management

No new reporting is required. Current multimedia reporting requirements are outlined in RECAP. In addition, the number of multimedia and multi-facility referrals and penalty order complaints must be reported pursuant to the End of Year Enforcement and Compliance Data Reporting Guidance. Regions are reminded that in order to obtain an accurate count for multimedia and multi-facility judicial referrals, complaints and compliance orders, a multimedia-multi-facility case form must be completed. Regions are similarly reminded to notify the Multimedia Enforcement Division at Headquarters of all multimedia referrals.

(b) Regional-State Coordination

State involvement in national multimedia casework is strongly encouraged. In the case of enforcement actions developed under the National Enforcement Screening Strategy protocols, Regions should assess the level of state-initiated compliance assistance and enforcement activity once case management teams are developed and, where practicable, encourage state participation in the NESS-coordinated actions. Generally, although there is no oversight of state multimedia program development, per se, the regions may encourage the development of such programs as they see fit, requesting Headquarters assistance and resources as appropriate.

**11. ENVIRONMENTAL JUSTICE PROGRAM**

EPA is committed to implement Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," by focusing federal attention on the environmental and human health conditions in these communities. The Office of Environmental Justice has worked with all parts of EPA, through a network of environmental justice coordinators, to integrate environmental justice in all programs, and within OECA to ensure that enforcement and compliance assurance address environmental justice concerns and that

these activities are coordinated to more effectively address the needs of impacted communities. To ensure that the goals of environmental justice are accomplished, regional enforcement and compliance personnel should incorporate environmental justice concerns into ongoing enforcement/compliance activities. In particular they should ensure that:

- 1) the public has access to compliance and enforcement documents and data, particularly to high risk communities, through multimedia data integration projects and other studies, analyses and communication/outreach activities;
- 2) EPA's policies, programs and activities, including public meetings, address minority and low income community issues so that no segment of the population suffers disproportionately from adverse health or environmental effects, and that all people live in clean, healthy and sustainable communities, consistent with Executive Order 12898;
- 3) noncompliance is deterred and environmental and human health improvements are achieved by maintaining a strong, timely and active enforcement presence;
- 4) enforcement actions are directed to maximize compliance and address environmental and human health problems in communities of low income and minority populations, and
- 5) when possible, enforcement actions in or near EJ communities require environmental or human health improvements, such as pollutant reductions and/or physical or management process changes.

### **Compliance Assistance**

When conducting focused compliance assistance activities, the EPA Regions and States should ensure that regulated entities within EJ communities, or impacted communities with significant minority and/or low-income populations, are recipients of EPA's compliance assistance materials and services as appropriate. In addition, when producing compliance assistance materials, EPA should make an effort to ensure that they are reproduced in the appropriate multiple languages of the impacted regulated community whenever possible.

### **Compliance Monitoring**

EPA inspections are subject to the Executive Order 12898 which requires the EPA to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." Prior to planning and targeting inspections, it may be necessary to consider the following: (1) will the inspection impact enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) has there been any public input regarding the area or facility; (3) is there existing research and data collection relating to the health of and environment of minority populations and low-income populations and; (4) have differential patterns of consumption of natural resources among minority populations and low-income populations been identified. When targeting inspections, assess whether inspections are being targeted in a manner that offers equal protection to all populations. Equal protection does not mean equitable distribution of inspections. Rather, inspections should be targeted to



diminish any excess risk which may be associated with areas that have a high concentration of industrial activity and/or toxins relative to the resident population.

If an inspection is performed as part of a review for a facility permit or approval, note that the EPA has promulgated an "Interim Guidance For Investigating Title VI Administrative Complaints Challenging Permits."

The "Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses" offers helpful hints on the collection and evaluation of environmental exposure and environmental health data, and may be of assistance in targeting inspections.

### **Enforcement Actions**

If an inspection identifies violations, the new EPA Supplemental Environmental Projects Policy contains specific guidance on how environmental justice concerns can be addressed. If a SEP is to replace a fine, the Region should ensure that it is equitable when compared with similar actions in other communities.

### **Program Leadership and Evaluation**

Training: Regional EJ Coordinators can be a valuable source of information to assist in integrating an awareness of environmental justice issues into any Regional enforcement training programs.

## **12. TRIBAL PROGRAM**

EPA has the responsibility to directly implement its programs in Indian country, unless and until tribal governments have received that authority. Given that responsibility, the regions will continue to make sure that all the elements of the core enforcement and compliance assurance program are implemented in Indian country. During FY 2000/2001, the regions should make every effort to increase their presence in Indian country, especially in the areas of compliance assistance, and enforcement, where warranted, against federal, private and tribal facilities.

During the second half of FY 1999, OECA expects to finalize its Strategic Plan for Indian country. The strategy, which will be issued under separate cover, identifies the activities that OECA and the regional enforcement programs will take to implement the enforcement and compliance assurance program over the next five years in order to protect human health and the environment in Indian country. The strategy will emphasize compliance assistance, compliance incentives, and enforcement to carry out these goals.

Some of the specific elements of the strategy— which has both short term and long term components— will be implemented by OECA Headquarters, some by the regions, and some will be

implemented jointly by both Headquarters and the regions. Here are the priority activities that the regions should be undertaking in FY 2000/2001 to implement the strategy:

**Assessing Non-Compliance in Indian Country:** Complete and accurate information about the universe of regulated entities and their compliance status in Indian country is necessary for OECA and the regions to successfully protect the environment and enhance compliance. The goal is to accurately and comprehensively assess the compliance status of facilities in Indian country and to define and target priority areas of noncompliance. To help realize this goal, the regions will develop their own inventories of public and private facilities in Indian country during FY 2000/2001.

**Compliance Assistance and Capacity Building:** OECA's compliance assistance and capacity building efforts in Indian country are designed to provide Federal facilities, non-tribally-owned or operated facilities, and tribal governments that own or manage regulated facilities with the information and support necessary to maintain compliance. Consistent with EPA's 1984 Indian Policy, OECA and the regions will utilize compliance assistance as the initial means of resolving non-compliance and maintaining compliance on the part of tribally-owned or managed facilities, although the Agency will take enforcement actions when necessary if compliance assistance fails to correct violations at tribally-owned facilities in a timely fashion. To help implement this approach, during FY 2000/2001, the regions will work with their tribal governments to assess both short-term and long-term tribal compliance and technical assistance training needs, using the Tribal Environmental Agreements (TEAs) or other process to develop the information.

**Compliance Monitoring and Enforcement:** Until tribal governments are delegated the authority to implement enforcement programs, EPA will take enforcement actions in Indian country under its direct implementation authority against federal facilities, privately-owned and tribally-owned facilities where warranted. In FY 2000/2001, the regions will continue to inspect identified high-priority regulated facilities located on or near Indian country, as those priorities are specified in TEAs or the MOA. The regions also should give priority attention to working with OECA Headquarters to implement the tribal credentials program for interested tribal governments. (Note: during the second half of FY 1999, OECA will issue guidance on the Enforcement Principles Outlined in the 1984 Indian Policy, which will address the issue of potential enforcement against tribally-owned facilities in more detail).

### **13. CRIMINAL ENFORCEMENT, FORENSICS, AND TRAINING CORE PROGRAM**

#### **Criminal Enforcement**

Criminal enforcement serves the following purposes:

- addresses conditions which may present imminent and substantial endangerment to human health or the environment;
- prevents future environmental harm from occurring;
- deters others from future similar illegal behavior
- levels economic playing field.

In order to achieve these purposes, each Program Office in the Region will continue to cooperate closely with the Criminal Investigation Division (CID) to identify, investigate and prosecute criminal violations of Federal environmental laws, with a particular emphasis on identifying criminal activity which victimizes environmental justice communities. In order to promote cooperation between the region and CID, the region should:

### **Enforcement Actions**

Identify leads appropriate for criminal investigations, and submit them for the regional screening process.

Assist CID in identifying, targeting, and prosecuting persons who provide or maintain false data in areas within EPA's jurisdiction, such as false water monitoring reports, etc.

Provide technical support to CID investigations, providing in-house personnel as witnesses when necessary, and maintain legal and staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crime.

Ensure that the January 12, 1994 Memorandum on the Exercise of Investigative Discretion document is distributed to all ORC attorneys, and ensure that the content of this document is incorporated into training sessions on criminal enforcement which are periodically held for ORC attorneys and program enforcement staff.

Provide regional support for multi-media prosecutions of alleged criminal violations.

### **National Enforcement Investigations Center**

#### **Program Leadership and Evaluation**

Request NEIC support through the planning process established by OECA in consultation with NEIC.

### **National Enforcement Training Institute**

#### **Program Leadership and Evaluation**

Conduct training of EPA, state, and tribal personnel as approved through the NETI course planning and delivery process.